The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL:	SB 2034
INTRODUCER:	Senator Wise
SUBJECT:	Arbitration Agreements/Medical Negligence Claims
DATE:	March 25, 2010
REVISED:	03/29/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	**Fav/2 amendments**
2.			BI	
3.			HR	
4.			HA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....		Statement of Substantial Changes
B. AMENDMENTS.....	X	Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill creates certain safeguards for patients and consumers relating to the execution and enforceability of arbitration agreements in the medical services and nursing home care context, and includes language detailing the issues and concerns surrounding arbitration agreements in this context, as well as the Legislature's intent to address those issues and concerns.

The bill specifies that arbitration agreements executed prior to medical treatment or care (pre-dispute agreements), as well as arbitration agreements executed after medical treatment or care (post-dispute agreements) are voidable as against public policy if these agreements violate the Florida Arbitration Code (code) and the provisions created within the code under the bill. In addition, the bill delineates how arbitrators are to be selected in these arbitrations.

Some of the specific safeguards relating to pre-dispute agreements include provisions:

- Ensuring that a patient or consumer receives notice that he or she is foregoing a right to a jury or court trial;
- Affording the patient or consumer a right to rescind the agreement at any time prior to the initiation of arbitration; and

- Precluding health care providers and nursing homes from denying services, treatment, or care if a patient or consumer refuses to sign an agreement or rescinds the agreement.

The bill also includes safeguards relating to post-dispute agreements, including notice provisions similar to the pre-dispute agreements, as well as the opportunity for a patient or consumer to review the agreement for 72 hours prior to execution.
This bill creates section 682.025, Florida Statutes, and includes language that does not appear to be intended for codification.

II. Present Situation:

Arbitration Generally

For many years, courts and legislatures have utilized arbitration as an alternative method to resolve disputes between parties in an expedient, efficient, and inexpensive manner.[1] However, when parties agree to participate in arbitration, they concede some of the safeguards that are traditionally afforded to those who proceed to court, one of which is the right to have the evidence weighed in accordance with established legal principles.[2] Arbitration may be defined as "a process that allows parties voluntarily to refer their disputes to an impartial third person, an arbitrator, selected by them to determine the parties' rights and liabilities."[3] Typically, a decision rendered by arbitrators is as binding and conclusive as the judgment of a court.[4] Because of the federal policy favoring and encouraging the use of arbitration to resolve disputes, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power, to use in many noncommercial consumer contracts.[5]

Federal Arbitration Act

The Federal Arbitration Act (FAA) was enacted by Congress in 1925 to establish enforceability of pre-dispute arbitration provisions in maritime transactions, as well as contracts concerning interstate commerce. Section 2 of the FAA provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving [interstate] commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.[6]

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[1] Elizabeth K. Stanley, *Parties' Defenses to Binding Arbitration Agreements in the Health Care Field & the Operation of the McCarran-Ferguson Act*, 38 ST. MARY'S L.J. 591, 591-92 (2007).
[2] *Affiliated Marketing, Inc. v. Dyco Chemicals & Coatings, Inc*., 340 So. 2d 1240 (Fla. 2d DCA 1976).
[3] Stanley, *supra* note 1, at 592 (internal citations omitted).
[4] *Capital Factors, Inc. v. Alba Rent-A-Car, Inc*., 965 So. 2d 1178, 1182 (Fla. 4th DCA 2007).
[5] Stanley, *supra* note 1, at 592.
[6] Federal Arbitration Act, 9 U.S.C. s. 2.

The United States Supreme Court has recognized that the purpose of the FAA is "to reverse the longstanding judicial hostility to arbitration agreements . . . and to place arbitration agreements upon the same footing as other contracts."[7] Two of the primary goals of the FAA include:

- Curing disparity in the treatment of arbitration agreements; and
- Promoting arbitration between two commercial parties with equal bargaining power.[8]

Although the FAA directs courts to place arbitration agreements on equal footing with other contracts, it does not require parties to arbitrate when they have not unequivocally agreed to do so.[9]

Florida Arbitration Code

The Florida Arbitration Code (FAC) is patterned after the Federal Arbitration Act.[10] Florida law, and specifically the FAC, governs arbitration clauses where interstate commerce is not implicated.[11] Florida courts applying the FAC, much like federal courts applying the FAA, "announce that they generally lean toward resolving all doubts in a disagreement over arbitrability in favor of arbitration, rather than against it."[12]

The FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, the appointment of arbitrators, the arbitration hearing process and procedure, the entry and enforcement of arbitration awards, and appeals. Under the FAC, two or more parties may enter an agreement to submit a controversy or dispute to arbitration.[13] Arbitration can be compelled by a court if one party refuses to comply with the terms of the contract to resolve a dispute through arbitration.[14] The parties can agree to methods for appointing an arbitrator or multiple arbitrators, and the court may appoint an arbitrator if necessary.[15]

At the hearing set by the arbitrator or arbitrators, the parties are entitled to be heard, to present evidence material to the dispute, and to cross-examine witnesses appearing at the hearing.[16] After the hearing, the arbitrator or arbitrators must issue an award signed by the arbitrators joining in the award.[17] A party may apply to a court of competent jurisdiction for confirmation of the

[7] *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 89 (2000).
[8] Stanley, *supra* note 1, at 599 (citing *Keymer v. Mgmt. Recruiters Int'l, Inc.,* 169 F.3d 501, 504 (8th Cir. 1999)).
[9] *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279 (2002).
[10] *Ocala Breeders' Sales Co. v. Brunetti*, 567 So. 2d 490 (Fla. 3d DCA 1990).
[11] *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).
[12] Michael Cavendish, *The Concept of Arbitrability Under the Florida Arbitration Code*, 82 FLA. B.J. 18, 20 (Nov. 2008) (citing *Waterhouse Constr. Group, Inc. v. 5891 S.W. 64th Street, LLC*, 949 So. 2d 1095, 1099 (Fla. 3d DCA 2007)).
[13] Section 682.02, F.S.
[14] Section 682.03, F.S.
[15] Section 682.04, F.S.
[16] Section 682.04, F.S. A party has a right to be represented by an attorney at any arbitration proceeding or hearing. Section 682.07, F.S.
[17] Section 682.09(1), F.S.

award.[18] The FAC also establishes procedures for vacation, modification, or correction of an award.[19] An appeal may be taken from:

- An order denying an application to compel arbitration;
- An order granting an application to stay arbitration;
- An order confirming or denying confirmation of an award;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to the FAC.[20]

If the arbitrator's order or award is patently ambiguous, the trial court should remand the matter back to the arbitrator for clarification of the order or award or vacate the award and order a rehearing.[21]

Arbitration Agreements in Contracts for Medical Services

Insurance companies and physicians are more frequently requiring patients to enter into arbitration agreements regarding any potential medical malpractice claims resulting from the medical treatment or care.[22] Therefore, some patients may face a choice when seeking medical treatment or care: sign an arbitration agreement or forego treatment with a particular physician or other health care provider.[23] These arbitration agreements may apply to all medical negligence and professional malpractice claims arising out of the physician-patient relationship, and bind the patient, as well as the spouse and heirs of the patient.[24]

Some patients have challenged the enforceability of arbitration agreements in this context by asserting that the agreements are void as against public policy, are too broad, are essentially contracts of adhesion, and are unconscionable.[25] Generally, courts will closely scrutinize physician-patient arbitration agreements under general contract principles to determine if the agreements are unenforceable contracts of adhesion.[26] In *Jonathan M. Frantz, M.D., P.A. v. Shedden*, a Florida eye patient brought a medical malpractice action against an eye clinic after

[18] Section 682.12, F.S.
[19] Sections 682.13 and 682.14, F.S.
[20] Section 682.20, F.S.
[21] 3A FLA. JUR 2D *Arbitration and Award* s. 95.
[22] Jennifer Gillespie, *Physician-Patient Arbitration Agreements: Procedural Safeguards May Not Be Enough*, 1997 J. DISP. RESOL. 119, 119 (1997).
[23] *Id.*
[24] *Id*. at 120.
[25] *See Buraczynski v. Eyring*, 919 S.W.2d 314 (Tenn. 1996). In *Buraczynski*, a patient signed an arbitration agreement in the context of medical services prior to a knee-replacement operation. The agreement covered all medical negligence and malpractice claims arising out of the surgery, and provided that the patient would have 30 days to revoke the agreement by providing written notice to the physician. After a challenge by the patient's heirs to avoid participation in arbitration, the Tennessee Supreme Court found that the agreement was consistent with public policy, was not overly broad, and was an enforceable adhesion contract because it was supported by consideration and was not oppressive or unconscionable. *Id.* at 321.
[26] *See Broemmer v. Abortion Services of Phoenix Ltd.*, 840 P.2d 1013 (Ariz. 1992); *Leong by Leong v. Kaiser Foundation Hosp.*, 788 P.2d 164 (Haw. 1990); and *Obstetrics and Gynecologists William G. Wixted, M.D., Patrick M. Flanagan, M.D., William F. Robinson, M.D. Ltd. v. Pepper*, 693 P.2d 1259 (Nev. 1985).

complication arose from elective eye surgery.[27] The eye clinic moved to stay litigation and enforce arbitration. During a preoperative visit, the plaintiff had signed an arbitration agreement that was separate from other documents, was afforded the opportunity to review the agreement, and was advised that he could ask staff questions regarding the agreement. The court concluded that, because the agreement was neither procedurally nor substantively unconscionable, the litigation should be stayed in favor of arbitration.[28]

Statutory Safeguards for Arbitration Agreements

Because some state courts strictly uphold arbitration agreements in the medical services context, some state legislatures have enacted legislation prescribing certain safeguards for patients and consumers of medical treatment and other health care services. For example, California has adopted a statute requiring any contract for medical services which contains a provision of arbitration of any dispute as to medical negligence to clearly provide notice to the patient that he or she is giving up the right to a jury or court trial.[29] Similarly, Colorado enacted a statute providing, among other safeguards, that the patient has 90 days to rescind an arbitration agreement after execution and that no health care provider can refuse services if the patient refuses to execute the agreement or exercises the 90-day right of rescission.[30]

III. Effect of Proposed Changes:

The bill creates certain safeguards for patients and consumers relating to the execution and enforceability of arbitration agreements in the medical services and care context.

Legislative Intent

Prior to delineating specific safeguards relating to arbitration agreements in the medical services and care context, the bill recognizes in "whereas" clauses that:

- Some medical malpractice insurers encourage health care providers to utilize arbitration agreements as a condition of providing medical malpractice insurance to health care providers;
- Some nursing homes and health care providers require patients and nursing home residents to execute arbitration agreements prior to the delivery of services and medical care;
- Many insurance plans restrict the choice patients have in choosing health care providers and nursing homes, leaving patients with no ability to fairly negotiate a contract for services;
- The Legislature created a comprehensive statutory scheme for health care providers in ch. 766, F.S., and for nursing homes in ch. 400, F.S., to ensure the availability of health care services in Florida by stabilizing the availability of liability insurance by statutorily

[27] *Jonathan M. Frantz, M.D., P.A. v. Shedden*, 974 So. 2d 1193 (Fla. 2d DCA 2008).
[28] *Id*. at 1198.
[29] CAL. C.C.P. s. 1295.
[30] COLO. REV. STAT. ANN. s. 13-64-403. This statute has been subject to constitutional challenges premised upon a preemption argument. See the "Other Constitutional Issues" section of this analysis.

governing the rights of patients and duties of health care providers and nursing homes in a comprehensive way; and
- Contracts for services that change the rights of the parties affect the stability of the insurance rates and the health care system and services that are overseen and regulated by the State of Florida.

The bill further provides that it is the intent of the Legislature that:

- An arbitration agreement be a voluntary agreement between a patient and a health care provider or nursing home, and not a prerequisite to medical services or care;
- Medical malpractice insurers not require health care providers or others to require the use of arbitration agreements without certain safeguards that are designed to protect patients' and nursing home residents' rights; and
- Health care providers and nursing homes not require consumers and patients to sign any contract for services that changes the rights of the consumer or patient as provided in chs. 766 or 400, F.S., or that requires a pre-dispute arbitration in advance of providing care.

Definitions

The bill defines the following terms:

- "Consumer" means a patient of a provider or a nursing home resident. The term includes a legal guardian of the consumer or any other person who is legally authorized to enter into a pre-dispute agreement or post-dispute agreement with a provider on behalf of a consumer.
- "Dispute" means a medical negligence claim under ch. 766, F.S., or a claim against a nursing home pursuant to the common law, or ss. 400.02 or 400.0233, F.S.
- "Provider" means a health care facility licensed under chapter 395,[31] a health care practitioner as defined in s. 456.001,[32] or a nursing home facility licensed under part II of ch. 00, F.S.
- "Pre-dispute agreement" means an arbitration agreement executed by a consumer and a provider before the occurrence of events forming the basis of a dispute.
- "Post-dispute agreement" means an arbitration agreement executed by a consumer and a provider after the occurrence of events forming the basis of a dispute.

Pre-Dispute and Post-Dispute Agreements

The bill provides that agreements between a consumer and a provider which conform to the provisions of the Florida Arbitration Code (FAC) are enforceable and consistent with the public

[31] Chapter 395, F.S., governs the licensing of hospitals, ambulatory surgical centers, mobile surgical facilities, various trauma centers, rural hospitals, and family practice teaching hospitals.
[32] This reference to the definition of "health care practitioner" in s. 456.001, F.S., includes acupuncturists, physicians, doctors of osteopathy, chiropractors, naturopaths, optometrists, nurses, pharmacists, dentists, dental hygienists, midwifes, speech pathologists, audiologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, nutritionists, athletic trainers, prosthetists, pedorthists, and orthotists.

policy of this state. If an arbitration agreement does not comport with the FAC – including the new safeguards for consumers provided in the bill – the agreement is voidable at the option of the consumer until the initiation of arbitration. In effect, regardless of whether the arbitration was signed prior to or after medical treatment or care, if the agreement does not satisfy every provision of the FAC, the agreement may not be enforced against the patient, nursing home resident, or a legal guardian of either.

The bill specifies that pre-dispute and post-dispute agreements may not restrict or abolish any substantive or due process right or restrict, in any way, the damages or remedies available to the consumer.

The pre-dispute and post-dispute agreements must allow the consumer and the provider to select the arbitrators by mutual agreement, and may not restrict the panel from which the arbitrator or arbitrators are selected. Alternatively, if the parties cannot reach an agreement, the court is authorized to appoint one or more arbitrators who are acceptable to both. Although the bill does not specify which "court" has jurisdiction to appoint the arbitrator, the Florida Arbitration Code provides that the term "court" means any court of competent jurisdiction of this state.[33]

Safeguards in Pre-Dispute Agreements

The bill includes several provisions designed to protect patients and nursing home residents presented with arbitration agreements to execute prior to medical treatment or care.

The bill provides that each pre-dispute agreement:

- Must be explained in detail to the consumer by the provider;
- May be rescinded at any time before the initiation of arbitration by the consumer or the provider by notifying the other in writing;
- Must be included in a separate document apart from other documents provided to the consumer by the provider and must be clearly and conspicuously identified as an arbitration agreement;
- Include the signature of an individual who has witnessed the provider's explanation of the arbitration agreement to the consumer;
- Provide, immediately before the signature line provided for the consumer, a specified statement in at least 16-point bold red type advising the consumer that he or she:
    - Is giving up a constitutional right to a jury or court trial;
    - Has the right to consult with an attorney regarding the agreement; and
    - Cannot be refused services solely because he or she refused to sign the agreement or rescinded the agreement.

The bill provides that a copy of the pre-dispute agreement must be provided to the consumer at the time it is signed by the consumer and representative of the provider.

[33] The making of an agreement or provision for arbitration subject to the Florida Arbitration Code and providing for arbitration in this state confers jurisdiction on the court to enforce the agreement. Section 682.18(1), F.S.

The provision in the bill affording both parties the right to rescind the agreement at any time prior to the initiation of arbitration significantly weakens the incentives associated with arbitration agreements for the parties if either party can render the agreement void at any time. If it is the intent of the Legislature to provide a consumer with a period time to thoughtfully reflect on the agreement and decide that the agreement is not in his or her best interests, the Legislature could allow the agreement to be rescinded by the parties within a particular timeframe from the date of execution of the agreement (e.g., 30 or 60 days from the date of execution of the arbitration agreement).

The bill includes a particular provision that must be included in the arbitration agreement. This provision specifies that any dispute arising from negligence or problems with care, or any services rendered that were unnecessary or were improperly or negligently rendered, will be determined by submission to arbitration, and not by a lawsuit or resort to the judicial process. The provision acknowledges that both parties are foregoing their constitutional right to a jury trial, and that the consumer has the right to seek legal counsel.

The consumer is also afforded the right to rescind the agreement by written notice to the provider at any time before the beginning of arbitration. Although the provision affords consumers the right to rescind the agreement, the provision does not afford *the provider* the right to rescind the agreement, which is inconsistent with the substantive provision affording both the provider and the consumer the right of rescission under subsection s. 682.025(5)(b), F.S., as created in the bill.

The bill expressly provides that a provider may not refuse to provide services to any consumer solely because the consumer refused to execute the arbitration agreement or exercised the right of rescission. The bill also precludes a provider from submitting the pre-dispute agreement to a consumer for approval if the consumer's medical condition requires emergency treatment services and care[34] or the condition prevents the consumer from making a rational decision whether or not to execute the pre-dispute agreement.

Safeguards in Post-Dispute Agreements

The bill also affords certain safeguards to consumers who consider execution of an arbitration agreement after medical care or services have been rendered by a provider. The bill specifies that a provider must afford the consumer 72 hours to review a post-dispute agreement and consult with an attorney, if necessary, before signing the post-dispute agreement.

Similar to the requirement for pre-dispute agreements, the post-dispute agreement must also include, immediately before the signature line provided for the consumer, a specified statement in at least 16-point bold red type advising the consumer that he or she:

- Is giving up a constitutional right to a jury or court trial; and

[34] "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility. Section 395.002(9), F.S.

- Has the right to review the agreement for 72 hours before signing and consult with an attorney if necessary.

A voluntary arbitration process to encourage settlement of claims is also included in the Medical Malpractice Act to provide a plan for prompt resolution of medical negligence claims.[35] In some instances in the medical negligence context, the parties to a post-dispute agreement, as defined by the bill, may also be considered subject to voluntary arbitration under the Medical Malpractice Act. It is unclear whether the voluntary arbitration procedures of the Medical Malpractice Act or the provisions of the Florida Arbitration Code created by this bill would govern individuals pursuing post-dispute arbitration in the medical malpractice context.

Effective Date

The bill has an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

If this bill becomes law, it could be subject to a constitutional challenge asserting that the created section is preempted by the Federal Arbitration Act.

The Supremacy Clause of the United States Constitution establishes federal law as the "supreme law of the land, and invalidates state laws that interfere with or are contrary to federal law."[36] However, the Tenth Amendment to the U.S. Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Therefore, courts have consistently interpreted the Tenth Amendment to mean that "'[t]he States unquestionably do retai[n] a significant measure of sovereign authority. . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.'"[37]

[35] Section 766.207, F.S.
[36] *ABC Charters, Inc. v. Bronson*, 591 F.Supp.2d 1272 (S.D. Fla. 2008) (quoting *Lozano v. City of Hazleton*, 496 F.Supp.2d 477, 518 (M.D. Pa. 2007)); *see also* U.S. CONST., art. VI.
[37] *New York v. United States*, 505 U.S. 144, 156 (1992) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 752 (1833)).

The Federal Arbitration Act (FAA) creates a body of federal substantive law which applies in both state and federal courts.[38] Under the Supremacy Clause of the U.S. Constitution, the FAA, enacted pursuant to the commerce clause of the U.S. Constitution, supersedes conflicting provisions of state law, and state courts are required to utilize the FAA when it applies.[39] "The act is based upon the incontestable federal control over interstate commerce and over admiralty, and applies only to arbitration agreements that are part of a written maritime contract or a contract evidencing a transaction involving interstate commerce."[40]

The U.S. Supreme Court has held that the FAA preempted a Montana statute that contained specific notice requirements for arbitration agreements in the medical services context.[41] The Court reasoned that the Montana law:

> places arbitration agreements in a class apart from "any contract," and singularly limits their validity. The State's prescription is thus inconsonant with, and is therefore preempted by, the federal law.[42]

Some case law suggests that a state statute governing arbitration agreements may be reverse-preempted by the McCarran-Ferguson Act.[43] Under this interpretation, state law is granted immunity from FAA preemption through the application of the McCarran-Ferguson Act, a federal law passed for the purposes of restoring state supremacy in the area of insurance. Therefore, if these safeguards can be tied to the states' interest in regulating insurance, these safeguards for patients in arbitration agreements in the medical services context are left to the states' regulation.[44]

The constitutionality of this bill would likely turn on whether a court determines that these pre-dispute and post-dispute agreements affect interstate commerce, whether the court perceives these provisions as impeding the purpose of the FAA, and whether the court chooses to recognize the reverse-preemption argument under the McCarran-Ferguson Act.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[38] *Southland Corp. v. Keating*, 465 U.S. 1 (1984).
[39] 3A FLA. JUR. 2D *Arbitration and Award* s. 6.
[40] *Id.*
[41] *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996).
[42] *Id.* at 688; *see also In re Nexion Health at Humble, Inc.*, 173 S.W.3d 67 (Tex. 2005).
[43] *Allen v. Pacheco*, 71 P.3d 375 (Colo. 2003).
[44] *Id.*

B. Private Sector Impact:

Individuals injured by negligent medical or nursing home care or treatment may seek compensation for injuries in court rather than arbitration under some circumstances. Health care providers and nursing homes may be subject to higher premiums for professional liability insurance due to the options for injured patients and consumers to elect to seek redress in court rather than arbitration.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On line 183 of the bill, it references "emergency treatment services and care" as defined by s. 395.002, F.S. Only the term "emergency services and care" is defined by s. 395.002(9), F.S. The word "treatment" should be deleted for the term to comport with the cross-reference.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 142168 by Judiciary on March 26, 2010:
Makes the actual provision required to be included in the arbitration agreement regarding rescission of the agreement consistent with the substantive provision in the bill by clarifying that both the consumer *and the provider* have the right to rescind the agreement at any time prior to the initiation of arbitration.

Barcode 440492 by Judiciary on March 26, 2010:
Deletes a reference in the bill to "emergency treatment services and care" and replaces it with the defined term "emergency services and care."